REMARKS

The Office Action mailed August 21, 2008 has been carefully considered and the following is responsive thereto. Claims 1-27 are pending in the application.

Non-Statutory Obviousness-Type Double Patenting Rejection

At pages 2-3 of the Office Action, the Examiner maintained the rejection of claims 1 and 2 on the ground of non-statutory obviousness-type double patenting over claims 44 and 45 of copending application Serial No. 10/824,688 for the reasons set out in the Office Action mailed March 6, 2006.

Applicants again request that the rejection be held until such time as a notice of patentable subject matter has been received in the applications. An appropriate terminal disclaimer may be filed at that time, if necessary.

Rejections under 35 USC § 103

At pages 3-4 of the Office Action, the Examiner maintained the rejection of claims 1-17, 20, 21, and 23-27 under 35 USC § 103(a) as obvious over Gennadios (U.S. Patent 6,214,376) for the reasons set out in the Office Action mailed March 6, 2006. Claims 18, 19 and 22 were separately rejected under 35 USC § 103(a) as obvious over Gennadios (U.S. Patent 6,214,376) for the reasons set out in the Office Action mailed March 6, 2006. The Examiner's remarks in support of the rejections appear to be the same as his remarks in the Office Action mailed March 6, 2006.

Applicants respectfully submit that the Examiner has not set forth a proper *prima facie* case of obviousness for reasons of record and such comments are incorporated herein by reference for purposes of brevity. Reconsideration and withdrawal of the foregoing rejections is respectfully submitted.

The Examiner acknowledges Applicants' argument that kappa-2 carrageenans "have different properties and are structurally different from kappa carrageenans and iota carrageenans in regard to sulfation ratios, gelling properties, and water gel strength" (Office Action at page 4; emphasis added). However, the Examiner maintains the rejection based upon the following assertion: "This argument is not persuasive because where the claimed and prior art compounds possess a close structural relationship (all the compounds are carrageenans) and a specific significant property in common (i.e., gelling property, although at different degrees) which renders the claimed compounds obvious to one skilled in the art, they are effectively placed in the public domain and unpatentable per se, even though the Applicant has discovered that they possess an additional activity.

Furthermore, the Examiner acknowledges Applicants' argument that a skilled person "would have no reasonable expectation that kappa-2 carrageenan could be used for delivery system gel film applications" (Office Action at page 4). However, the Examiner argues in response that the "Gennadios patent establishes kappa and iota carrageenan compounds being present in delivery system gel film applications" (Office Action at page 4).

Essentially, the Examiner's position is based entirely on the technical assertion that all carrageenans have "a close structural relationship" and "a specific significant property in common." It is on these technical assertions that Applicants disagree. Applicants have explained, and provided multiple references in support, that kappa-2 carrageenans have different structures than iota carrageenans and kappa carrageenans and, based upon such structural differences and their known property differences (e.g., their known weak gelling properties), a skilled person would not have expected that kappa-2 carrageenan could be used in delivery system gel film applications.

Applicants position is contrasted by the position set forth by the Examiner. That is, the Examiner does not provide a single reference to support the position that one skilled in the field would expect kappa-2 carrageenan to have similar properties as kappa and iota carrageenans in water gels. In contrast, as mentioned above, Applicants have provided numerous references

indicating the different structure and properties of kappa-2 carrageenan, particularly, as it relates to its expected gel forming abilities.

In addition to the references already submitted, Applicants are filing herewith an Information Disclosure Statement citing the following reference: Marine Colloids Application Bulletin, G-39, 1990 ("Technical Bulletin"). This Technical Bulletin discusses the water gelling properties of various carrageenans. In particular, this Technical Bulletin states the following:

> "In order to consider a carrageenan for use in an aqueous gelling application, the prospective user should be familiar with the basic types of carrageenan that are available, their properties and how to use them in the system...The two basic water gelling carrageenans are kappa and iota...The kappa-2 carrageenan has properties intermediate between kappa and iota, however, it produces rather soft gels, therefore it is not often used by itself for preparation of water gels."
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> See pages 2 and 6 of the Technical Bulletin (emphasis added).

This Technical Bulletin does not list kappa-2 carrageenan as a known water gelling carrageenan and, further, states that because it is known to produce soft gels, "it is not often used by itself for preparation of water gels." This is consistent with the other references already submitted by the Applicants on this point.

In contrast, as mentioned above, the Examiner has not provided a single reference to support the position that one skilled in the field would expect kappa-2 carrageenan to have similar properties as kappa and iota carrageenans in delivery system gel film applications. There is no discussion in Gennadios regarding kappa-2 carrageenan or its possible use in the delivery system gel film applications of the present claims. Moreover, if the Examiner is arguing that Gennadios teaches the use of both kappa carrageenans and iota carrageenans in support of the rejection, Applicants again point out that, *given its known structural and property differences*

vis-à-vis kappa carrageenan, iota carrageenan or mixtures thereof, any such combination is NOT a disclosure or suggestion of kappa-2 carrageenan in delivery system gel film applications.[1]

Applicants again note that the Examiner has not offered any comment at all regarding the substance of the references provided by Applicant.

In view of the references cited by the Applicants and further in view of the lack of any reference material cited by the Examiner to support the rejection, Applicants maintain that one skilled in the art would not have found it obvious that kappa-2 carrageenan, having known structural and gelling differences from kappa carrageenan, iota carrageenan or mixtures thereof, could be used in delivery system gel film applications of the present claims. As such, withdrawal of the rejection is respectfully requested.

Early, favorable action is earnestly solicited.

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Respectfully submitted,

By /Paul A. Fair, Reg. No. 35,866/
Paul A. Fair, Esq.
Registration No.: 35,866
(o) 215-299-6723

Address all correspondence to:

Patent Administrator
FMC Corporation
1735 Market Street
Philadelphia, PA 19103

[1] During the interview conducted with Examiner White and Examiner Leigh Maier on October 17, 2007, the Undersigned explained the compositional differences between kappa-2 carrageenan and each of kappa carrageenan, iota carrageenan and mixtures of kappa carrageenan and iota carrageenan, as well as provided references in support of such differences for consideration. Those references are of record, but have not been discussed by the Examiner.